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UNITED STATES CONSTITUTION

Fourth Amendment 4
Fifth Amendment 4

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No._____

MARGUERITE ELIZABETH FREDERICKS, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*

PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE SUPREME COURT OF THE UNITED STATES:

Summary Statement of the Matter Involved

I.

A—Petitioner prays that WRIT OF CERTIORARI issue to review judgment of the United States Court of Appeals—5th Circuit—in this matter on *December 30th*, 1953, on the ground that said decision is in conflict with decisions of other Circuit Courts involving evidence secured by State Officers jointly with the Federal Government. At the specific request of the United States Marshal, Houston, Texas, the City Police arrested Petitioner *at her residence* and searched her home, *with-*

out search warrant, using the fruits thereof to convict. Further, the Courts below have decided a federal question in a way which is in conflict with applicable decisions of this Court.

B—Petitioner, with three others, was indicted in the United States District Court, Southern District of Texas, on an indictment containing three counts—*conspiracy (Sec. 2557 B, 26 U.S.C.); unlawful possession (2553 A, 26 U. S. C.)*, and *receiving, concealing, (Sec. 174, 21 U. S. C.)* relevant narcotic laws *(R. 5-9)*. Before trial, Petitioner filed Motion to Suppress because no search warrant existed authorizing search of *Petitioner's residence*, in violation of the 4th and 5th Amendments. *This was overruled (R. 11-15)*.

C—Case came on for trial *without a jury* resulting in a conviction on all counts. *There was no evidence to establish conspiracy*. Petitioner was sentenced to two (2) years, and fined ($1.00) Dollar, on each count *(R. 121-122)*.

D—Appeal was taken to the United States Court of Appeals—5th Circuit *(R. 123-25)*—which affirmed the Judgment on *December 30th, 1953*, the Court holding, inter alia, Petitioner was required to either claim ownership of unreasonably seized contraband or forfeit the right to challenge the seizure *(Supp. R. 228-229)*.

II.

Questions Presented

A—WHETHER Federal Government participated and shared in securing evidence, without search warrant, and Petitioner's rights guaranteed by 4th and 5th Am-

endments were invaded, where evidence indisputably shows (City) Police arrested her at specific direction of United States Marshal.

B—WHETHER Courts may constitutionally require Petitioner to waive 5th Amendment rights as prerequisite to assertion of 4th Amendment protection, or vice versa, in view of judicially-created doctrines; interaction of the 4th and 5th Amendments, and the Doctrine of Unconstitutional Conditions?

C—WHETHER conviction of Conspiracy without evidence is denial of Due Process of law to Petitioner.

III.

Statement of the Case

The United States Marshal requested the Houston Police to go to *Petitioner's residence* and to arrest her. Four Officers went *to the residence* of Petitioner (R. 24, 38; Supp. R. 52), forced their way in (R. 26, 55-56, 109), and arrested her and her companions—two men and another woman. They searched *her residence* thoroughly (R. 29-30, 33, 36-37, 43, 46, 57, 61, 110; Supp. R. 13, 25, 27). They found a small package of heroin on the floor under the bed and two hypodermic needles in a closet. The police seized these articles, as well as a towel, a handkerchief, spoons, and a bottle containing harmless chemicals (R. 31, 34-35, 57-60, 66).

This entry, search, and seizure were effected without benefit of any warrant (R. 53-54, 60, 112; Supp. R. 16-17, 29, 63). Sufficient time and opportunity existed to obtain a search warrant if the police had sought one (R. 28-29, 32, 55-56, 62-63).

A few hours (R. 75) after this search Petitioner and the others were turned over to the United States Narcotics authorities, who filed charges against Petitioner—solely on the basis of the evidence seized (Sup. R. 32, 70-71).

Motion to Suppress declaring illegal search of her home was timely filed. *This was overruled.*

Throughout, Petitioner contended the search unreasonable and unlawful; that use of the fruits was in violation of the Fourth and Fifth Amendments.

Since no evidence establishing conspiracy was offered, she further contended the conviction constituted a denial of Due Process of law.

The Circuit Court held Petitioner, although possessing standing to challenge, was required to either surrender the protection of the Fourth Amendment or the Self-Incrimination Clause of the Fifth Amendment.

Petitioner asserts that imposition of such a choice is unconstitutional.

IV.

Constitutional Amendments Involved

Amendment IV—Searches and Seizures

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment V—Due Process

"No person * * * shall be compelled in any criminal

case to be a witness against himself, nor be deprived of life, liberty, or property, withont due process of law; * * * "

V.

Reasons for Granting the Writ

Real and vital matters of law concerning Federal Criminal Procedure are involved in this cause.

A clear decision by this Court on fundamental problems here is badly needed.

The decision of the Court below, is in direct conflict with the decision of the 4th Circuit Court of Appeals in SUTHERLAND v. UNITED STATES, 92 F. 2d 305, Chief Judge Parker holding:

> " * * * Where the Federal officers adopt prosecution originated by state officers as a result of a search made by them, the same rule as to the admissibility of evidence obtained in the course of the search should be applied *as if it were made by the federal officers themselves* or under their direction."

The Federal Government caused arrest of Petitioner by City Police *at her residence* where the search took place.

The decision of the Court below is believed to be erroneous and conflicting with the decision of this Court in UNITED STATES v. LUSTIG, 338 U.S. 74, stating:

> " * * * Search is a functional, not merely a physical, process. Search is not completed until effective appropriation, as part of an uninterrupted transaction, is made of illicitly obtained objects for subsequent proof of an offense. * * * "

and with the recent decision rendered *February 1, 1954*—WALDER v. UNITED STATES, 74 S. Ct. 35,—which holds that methods believed *not* to be dissimilar with those employed in the instant cause, "are outlawed * * * because they encourage the kind of society that is obnoxious to free men."

The Court below holds, conceding the arrest was made at the command of the Federal Government, the simultaneous search at her home was separable from indisputable *Federal participation and cooperation* in her apprehension.

An important issue determined by the Court below and believed to be erroneous relates to the unconstitutional requirement that Petitioner was obliged to either abandon the 4th or 5th Amendement; thus implying there was *no* merger of the 4th and 5th Amendment. This holding is believed to be in conflict with BOYD v. UNITED STATES, 116, U.S. 616, and other representative cases, which hold that both Amendments not only throw light upon each other, but *must* be interpreted with regard to the demands of the other. This was wholly disregarded and denied Petitioner.

VI.

The decision rendered is in conflict with the recent opinion in RENT, ET AL., v. UNITED STATES OF AMERICA, (*not yet published*) decided January 6, 1954, by the 5th Circuit, and involving search and seizure and conspiracy.

Settlement of these questions by this Court is plainly in the public interest, since the legal right of every American citizen, the inviolability of law and constitution, and the common morality of the Federal Government are involved.

Resolvement of these issues by this Court is needed; other-

wise, lower courts will feel compelled to adjudicate similar issues by choosing one set of values to the exclusion of the other, leaving the law in a state of unstable equilibrium.

For the foregoing reasons, Petition for Writ of Certiorari *should be granted.*

MARGUERITE ELIZABETH FREDERICKS,

By _____

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Houston, Texas,
Attorney for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1953

No._____

MARGUERITE ELIZABETH FREDERICKS, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*

BRIEF IN SUPPORT OF PETITION

I.

Opinion of the Court Below

The opinion of the Circuit Court of Appeals appears following page 225 of the Record.

II.

Jurisdiction

(a) Jurisdiction of this Court is invoked under Section 1254 (7), 28 U.S.C.

(b) Judgment of the Circuit Court of Appeals was entered on *December 30th, 1953*.

(c) Petition for Rehearing was filed and denied *February 4th, 1954*.

III.

Statement of the Case

Full statement of the case is included in the preceding Petition of Title III.

IV.

Argument

WHERE UNITED STATES MARSHAL DIRECTED ARREST OF PETITIONER AND ILLEGAL SEARCH FOLLOWED ARREST, EVIDENCE SO OBTAINED VITIATES CONVICTION.

Petitioner had standing to challenge (INGRAM v. UNITED STATES, 113 F. 2d 966; GOLDSTEIN v. UNITED STATES, 316 U.S. 114; UNITED STATES v. JEFFERS, 342 U.S. 48).

The specific circumstances of this case, as well as the chain of responsibility for the illegal actions of the Police may be summarized:

(1) The United States Commissioner in Houston, Texas, ordered the United States Marshal to take Petitioner into custody;

(2) A responsible individual in the United States' Marshal's office, Houston, Texas, ordered Deputy Marshal Matthews to arrest Petitioner;

(3) Deputy Marshal Matthews, failing to make the arrest, called Lieutenant Martin, Houston Police Department, and asked assistance of the latter in making the arrest;

(4) Lieutenant Martin instructed two of his detectives and two uniformed Houston Police to make the arrest;

(5) These four officers then went and made the arrest, and at the same time perpetrated the illegal and unconstitutional search of the premises and seizure of property.

Search was made without a search warrant, and without probable cause.

Both arrest and unlawful search were used to justify each other. Both were effectuated in an uninterrupted sequence and without a broken link in the chain of events.

The evidence demonstrates that collusion, or cooperation, between State officers and Federal officers, in which one branch of the law "adopts" a case from another, has become habitual, regular and customary (R. 75, 95; Supp. R. 19, 42, 43, 44, 70, 73, 75, 80).

The Trial Judge noted that State and Federal officers "frequently cooperated", and had done so in this particular case "as they had done before" (R. 112).

This case represents what is becoming a regular custom that may involve thousands of cases in the future.

The Courts below spurned a rich legacy of Constitutional History and Experience as expressed in GAMBINO v. UNITED STATES, 275 U.S. 310; WEEKS v. UNITED STATES, 232 U.S. 383, and GOULED v. UNITED STATES, 255 U.S. 298, in approving Federal authorities knowingly receiving tainted evidence, and in making legal profit from it.

That History and Experience teaches if the Federal Government participates, either by requesting State cooperation, as in GAMBINO v. UNITED STATES, 275 U.S. 310, or by joining through its officers, as in BYARS v. UNITED STATES, 273 U.S. 28, the evidence is inadmissible unless obtained according to standards set by the Federal Constitution.

All governments punish (equally with the thief himself) the man who knowingly receives stolen goods and makes a profit of them.

In the face of such an organized, armed, and uniformed conspiracy, the rights of the private citizen crumble, and Due Process becomes a farce.

Federal and State officers, "joined hands" in obtaining contraband and aided each other in prosecuting Petitioner. The Motion to Suppress should have been granted (GAMBINO v. UNITED STATES, 275 U.S. 310; BYARS v. UNITED STATES, 273 U.S. 28; UNITED STATES v. FALLOCO, 277 F. 75; FOWLER v. UNITED STATES, 62 F. 2d 656).

COURTS MAY NOT CONSTITUTIONALLY REQUIRE PETITIONER TO WAIVE FIFTH AMENDMENT IN SEEKING PROTECTION FROM UNREASONABLE SEARCH AND SEIZURE GRANTED BY FOURTH AMENDMENT, OR VICE VERSA.

The Court below held, in effect, Petitioner was required to disprove or oblige to explain *possession* of the contraband. This, notwithstanding her Motion to Suppress and invocation of protection afforded by Fourth and Fifth Amendments.

In what appears to be a *novel situation*, the Court held, in the face of such circumstances, mere *possession of* contraband justifies conviction.

The Fourth Amendment and the Self-Incrimination Clause of the Fifth Amendment throw light upon each other (BOYD v. UNITED STATES, 116 U.S. 616),* and each

* "a case that will be remembered as long as civil liberty lives." (277 U.S. 438, 484, per Brandeis)

amendment must be interpreted with regard to the demands of the other.

The Histories of these amendments (4th and 5th) have been utilized and intermingled by the Courts since 1886 when this Court decided BOYD v. UNITED STATES, 116 U.S. 616. Confirmation that the Fifth Amendment Clause forbidding compulsory Self-Incrimination is violated by seizure of evidentiary objects was announced in GOULED v. UNITED STATES, 255 U.S. 298, and UNITED STATES v. LEFKOWITZ, 285 U.S. 452.

Courts are required to liberally construe these Amendments (WEEKS v. UNITED STATES, 232 U.S. 383).

The Doctrine of unconstitutional conditions provides additional resistance to imposition by Courts to waive one of the two Amendments. This Doctrine (INSURANCE CO. v. MORSE, 20 Wall 445) was developed by states to condition the right of "Foreign" corporations to transact business within their borders; hence; constitutional rights of living persons *a fortiori* should be free from conditional enjoyment.

The Courts should not have imposed upon Petitioner the requirement to give up rights under the Fourth Amendment in order to assert the Fifth Amendment privilege, or vice versa. Situations of custody and control of contraband may justify conviction of unlawful possession because of lack of standing to challenge the illegal search. *But that is not this case.*

It is indefensible to apply the standing doctrine so as to deny Petitioner to question this unconstitutional seizure and conviction.

CONVICTION OFFENDS DUE PROCESS OF LAW BECAUSE THERE IS NO EVIDENCE OF CONSPIRACY.

This record is completely barren of any evidence to establish existence of conspiracy.

In such matters, it is clear that this cause must be reversed on authority of UNITED STATES v. FALCONE, 311 U.S. 205; KASSIN v. UNITED STATES, 87 F. 2d 183; YOUNG v. UNITED STATES, 48 F. 2d 26, and MACKRETH v. UNITED STATES, 103 F. 2d 495; the latter being opinions of the *Fifth Circuit*.

Conclusion

The Government urges conviction upon fruits of an illegal search. It denounces and deplores the manner in which evidence was secured, and says it *would not* do such a thing. This argument is so obviously unfair and irrational that we pretermit further mention except that the Government should *not be* allowed to deny basic liberties to Petitioner.

Liberties granted all persons are being gradually chipped away. Restrictions and limitations applied to this case negate fundamental rights which the Founding Fathers bequeathed with the hope of development. Tyranny flows easily from accumulations of petty restrictions. Suppression eases the way of authority.

Civilization is strewn with the wrecks of systems which men at one time held true; systems in the name of which liberty was denied and pain needlessly inflicted.

Power is good or evil according to the vision that it serves; not the vision of the Courts alone, nor the vision of Defendants alone, but a vision that is common to both, though not discerned with equal range of sight.

Vision, in the light of this cause, is not the right to dream or the gift to supplant established liberties but, more humbly, the best light that we possess as reflected in the document inscribed with the blood of our forebears.

Conviction was obtained in defiance of the 5th Amendment. It is somewhat like the still, sad music of Humanity. Perhaps, like Virgil (Georg. 2.246-7), we may console ourselves with the statement:

> At sapor indicium faciet, Manifestus et ora trista temptantum sensu torquebit amaro.

Rights protected by 4th and 5th Amendments may not be cavalierly dismissed as "A rule of thumb * * * ", nor integrity of the Charter of Human Rights and Freedoms sustained by substituting officers' judgment of the 'can't think without perspiring type', in place of strict adherence to constitutionally guaranteed rights."

For these reasons, this Petition for Writ of Certiorari SHOULD BE GRANTED.

Respectfully submitted,

MARGUERITE ELIZABETH FREDERICKS,

By _____

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February 27, 1954

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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 456 Misc.

MARGUERITE ELIZABETH FREDERICKS, PETITIONER

v.

UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION TO THE GRANTING OF THE PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the District Court (R. 106-119) is not reported. The opinion of the Court of Appeals (R. 225-229) is reported at 208 F. 2d 712.

JURISDICTION

The judgment of the Court of Appeals was entered on December 30, 1953 (R. 230), and a petition for a rehearing was denied on February 4, 1954

(R. 231-238). The petition for a writ of certiorari was filed on March 1, 1954. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1). See also Rules 37(b)(2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether narcotics, seized by city police in a search without a warrant of petitioner's premises, were properly admitted as evidence in a federal prosecution.

2. Whether the evidence was sufficient to support petitioner's conviction.

STATEMENT

Petitioner and three others were charged with narcotic law violations in an indictment in three counts returned in the United States District Court for the Southern District of Texas. The first count charged conspiracy in violation of 26 U. S. C. 2557(b); the second, unlawful possession of 10 grains of heroin which did not have the appropriate tax stamps attached, in violation of 26 U. S. C. 2553(a); and the third, the receipt and concealment of this same heroin in violation of 21 U. S. C. 174. (R. 5-9.) In a trial without a jury petitioner was found guilty on all counts, and sentenced generally to imprisonment for two years and a fine of one dollar (R. 119, 121-122). On appeal the conviction was unanimously affirmed (R. 123-124, 230).

The pertinent evidence, as disclosed at the pretrial hearing on the motion to suppress evidence and at the trial, may be summarized as follows:

On December 10, 1952 the United States Com-

missioner at Houston, Texas called the U. S. Marshal's office and requested that petitioner be arrested since her bondsman wanted to be released from her bond (R. 165-166, 173). Deputy Marshal Matthews located the tourist cabin where petitioner resided, spent most of the night waiting for her, instructed a tourist court employee to phone when petitioner arrived, and returned to his home (R. 166-168).

At about 6:30 a. m. on December 11 the employee phoned Matthews that petitioner had returned, that he had seen a large sum of money being counted on a table, that there were several boys and a lady with petitioner, and that the situation looked suspicious (R. 168, 175). Since Matthews feared that petitioner might leave before he could reach the cabin, he phoned Lieutenant Martin of the Houston Police Department, requesting petitioner's arrest and giving the other information about the suspicious circumstances concerning the persons with petitioner. At this time Matthews had no information of a possible narcotic violation by petitioner; and although the offense for which the U. S. Commissioner wanted petitioner arrested on her bond was a narcotic charge, Matthews wanted her picked up for the Commissioner, and not at the request of federal narcotic authorities. (R. 168, 175-176.) Martin phoned another police officer, Murray, to tell him of the suspicious money counting incident as reported by the deputy marshal, but did not give any instructions about arresting petitioner or any named person (R. 205, 206). Murray in turn contacted by radio two detectives in a squad

car near the tourist camp, related the incident of the money counting, and directed them to investigate since the parties might be suspected hi-jackers who had been operating recently in that neighborhood. Murray did not instruct the detectives to arrest petitioner or any particular person. (R. 182, 194, 206-207.)

The two detectives and two uniformed Houston policemen, whom the detectives had contacted for help, then proceeded to the tourist cabin at about 7:35 a. m. (R. 138, 139, 145). They did not have a warrant of arrest or a search warrant (R. 53-54, 143-144, 188-189). After petitioner opened the door in response to a knock, she tried to close it again, but the officers forced their way in and immediately placed petitioner, Mrs. Jarvis, Hall and Ortiz under arrest for suspected hi-jacking (R. 55-56, 63, 153, 164-165, 185, 187). The officers found Hall counting about $200 to $300 on a bed and the other occupants nearby, and assumed that the money had been obtained by hi-jacking (R. 42, 49, 56, 186-187). The officers testified that there had been recent hi-jacking in the vicinity, that they were investigating for hi-jacking suspects, and that they had no information concerning narcotic violations (R. 47, 48, 63, 145-146, 161-162, 175, 182, 193).

In the search of the cabin after arrest of the occupants the officers found 10 grains of heroin and several hypodermic needles (R. 30, 33, 57, 100, 152-153, 188). No federal officers were present at or joined in the search (R. 145, 200). About five hours later the articles discovered in the search were

turned over to the federal narcotic authorities, who used them as evidence in the trial of the case adopted by them for prosecution (R. 41-42, 58, 59, 69-70, 76-78, 102, 197, 200).

Federal narcotic agent Griffin testified that federal narcotic officers had no standing working agreement with the Houston Police Department whereby they would take all narcotic cases turned over by the police and prosecute them in the federal courts. In some instances the federal authorities refused to accept cases which the local police desired to turn over to them, and it was customary for state officers to file narcotic cases in the state court. (R. 201-202.)

After the arrest on the way to the police station petitioner stated to the police that she guessed she would have to "take the rap for it since she had registered for the cabin"; but later at the homicide office she protested that "she wasn't going to take the rap for it alone when it belonged to all of them" (R. 38, 53). Both petitioner and Mrs. Jarvis had fresh scars on their arms from hypodermic needles (R. 39-40, 90-91).

ARGUMENT

1. Petitioner contends that federal and state officers joined in an illegal federal search and seizure so that her motion to suppress the evidence seized was improperly denied (Pet. 10-12). As both courts below found, however, the search was solely for state purposes so that the evidence seized was admissible in the federal prosecution.

It is true that the deputy marshal originally re-

quested the Houston police to arrange for the arrest of petitioner so that her bondsman could be released from her bond. The marshal, however, was not an officer charged with narcotic law enforcement, had no knowledge that petitioner was sought as a narcotic violator, and his sole desire was to deliver her to the U. S. Commissioner for surrender on her bond. He did not request the search complained of, and neither he nor any other federal officer participated in it (R. 145, 176-177, 200).

The four police officers who made the search had not been told by their superiors to arrest petitioner for surrender on the bond covering her previous federal offense. They had been informed only that they should go to the cabin, where the suspicious money counting had been seen and reported, to investigate for suspected hi-jackers recently operating in that vicinity. Consequently, when the police officers reached the cabin, they were interested only in the state offense of hi-jacking, not in a federal narcotic violation. It was only after they had arrested petitioner and the other defendants for suspected hi-jacking that the search was conducted for evidence of a state violation, but resulted instead in the discovery of the heroin later used as the basis for the federal prosecution.

The evidence showed that there was no standing working agreement between the Houston police and the federal narcotic authorities that they would adopt all cases turned over by the police for federal

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[1] See 28 U.S.C. [Supp. V] § 547 and 549 for the powers of a United States marshal.

prosecution. In some instances the federal authorities refused to adopt state narcotic cases, and it was customary for state officers to file such cases in the state courts. (R. 201-202.)

In these circumstances, where the search was made wholly by state officers acting under state law, with no federal officers present participating, or cooperating in the search, the evidence obtained by the search was admissible in the federal prosecution, even though the search may have been unauthorized. Cf. *Weeks* v. *United States,* 232 U.S. 383, 398; *Serio* v. *United States,* 203 F. 2d 576, 577-578 (C.A. 5), certiorari denied, 346 U.S. 887; *United States* v. *Scotti,* 102 F. Supp. 747 (S. D. Tex.) affirmed, 193 F. 2d 644 (C.A. 5); *Symons* v. *United States,* 178 F. 2d 615, 618-619 (C.A. 9), certiorari denied, 339 U.S. 985; *United States* v. *Diuguid,* 146 F. 2d 848 (C.A. 2), certiorari denied, 325 U.S. 857.

Lustig v. *United States,* 338 U.S. 74 (see Pet. 5), does not aid petitioner, for in that case this Court held that the federal agent participated in the search, not because he had furnished the original information to the city officers, as the deputy marshal had done in part in the instant case, but because he had joined in the search before it had run its course.

In *Lustig,* the federal officer was called in before the search was concluded, and he shared "in the critical examination of the uncovered articles as the physical search proceeded" (p. 78) and "had a vital share in sifting the evidence" (p. 79). Here,

on the other hand, the search "had run its course" (p. 78) and "the object of the search was completely accomplished" (p. 79) before the evidence was turned over to the federal authorities. In short, federal officers had no hand in the search; and "it is not a search by a federal official if evidence secured by state authorities is turned over to the federal authorities on a silver platter" (id., 78-79), as in the instant case. [2]

There is no conflict with *Sutherland* v. *United States,* 92 F. 2d 305 (C.A. 4), Pet. 5, which based the rejection of evidence illegally seized by state officers on the fact that there was a working arrangement between state and federal officers. Nor is there a conflict with *Rent* v. *United States,* 209 F. 2d 893 (C.A. 5), where the search was actually conducted by a federal narcotics officer.

2. Petitioner contends that there was no evidence to support her conspiracy conviction under count one (Pet. 14). But there was evidence of the presence of petitioner and Mrs. Jarvis in the tourist cabin in possession of heroin and the hypodermic outfits, evidence of the very recent use of heroin by both women, and petitioner admitted that the heroin belonged to all the occupants of the cabin. The totality of these circumstances was, we believe, sufficient to support petitioner's conspiracy conviction. In any event the conviction under sub-

[2] Neither do *Gambino* v. *United States,* 275 U.S. 310 and *Byars* v. *United States,* 273 U.S. 28 (see Pet. 11, 12) aid petitioner. Unlike the situation here, in *Gambino* the wrongful arrest, search, and seizure were made solely on behalf of the United States, and in *Byars* a federal agent participated in the search to make it a joint operation of local and federal officers.

stantive counts two and three were clearly supported by sufficient evidence. Cf. *Aeby* v. *United States,* 206 F. 2d 296, 298 (C.A. 5), certiorari denied, 346 U.S. 885; *Henderson* v. *United States,* 206 F. 2d 300, 302 (C.A. 5). Petitioner's argument that conviction could not under the Fifth Amendment be based on possession (Pet. 12-13) is in reality an attack on the statutory presumption which has been too often upheld to require discussion. *Casey* v. *United States,* 276 U.S. 413, 418; *Yee Hem* v. *United States,* 268 U.S. 178, 185; see also *Rossi* v. *United States,* 289 U.S. 89, 91. The convictions on the substantive counts would in themselves support the general sentence imposed, assuming *arguendo* that the evidence under the conspiracy count was insufficient. See *Claasen* v. *United States,* 142 U.S. 140, 147-148; *Evans* v. *United States,* 153 U.S. 608, 609; *Hirabayashi* v. *United States,* 320 U.S. 81, 85; *Pinkerton* v. *United States,* 328 U.S. 640, 641-642, fn. 1.

CONCLUSION

The case was decided upon established legal principles, and there is no question of importance to warrant further review by this Court. It is therefore respectfully submitted that the petition for a writ of certiorari be denied.

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